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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**  
 13 **DISTRICT OF NEVADA**

14 In re:

15 **USA COMMERCIAL MORTGAGE  
 16 COMPANY,**

17 **USA CAPITAL REALTY ADVISORS,  
 18 LLC,**

19 **USA CAPITAL DIVERSIFIED TRUST  
 20 DEED FUND, LLC,**

21 **USA CAPITAL FIRST TRUST DEED  
 22 FUND, LLC,**

23 **USA SECURITIES, LLC,** Debtors.

24 **Affects:**

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

24 Case No. BK-S-06-10725-LBR  
 25 Case No. BK-S-06-10726-LBR  
 26 Case No. BK-S-06-10727-LBR  
 27 Case No. BK-S-06-10728-LBR  
 28 Case No. BK-S-06-10729-LBR

29 **CHAPTER 11**

30 Jointly Administered Under Case No.  
 31 BK-S-06-10725 LBR

32 **SECOND OMNIBUS OBJECTION  
 33 OF USACM TRUST TO PROOFS OF  
 34 CLAIM BASED, IN WHOLE OR IN  
 35 PART, UPON INVESTMENT IN  
 36 THE RIVIERA – HOMES FOR  
 37 AMERICA HOLDING LOAN; AND  
 38 CERTIFICATE OF SERVICE**

39 Date of Hearing:

40 Time of Hearing:

41 The USACM Liquidating Trust (the "USACM Trust") moves this Court, pursuant  
 42 to § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and  
 43 Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an  
 44 order disallowing the Proofs of Claim filed by individual investors ("Direct Lenders")  
 45 against USA Commercial Mortgage Company ("USACM") to the extent such claims are  
 46 based upon an investment in the Riviera – Homes for America Holding loan (the "HFA –



1 Riviera Loan"). This Objection is supported by the Court's record and the Declaration of  
 2 Edward M. Burr filed with the Court at DE 5616 (the "Burr Decl.").

3 **I. INTRODUCTION**

4 On about May 26, 2006, the borrower paid off the HFA – Riviera Loan in full. In  
 5 turn, USACM distributed the proceeds from the HFA – Riviera Loan to the Direct Lenders  
 6 who invested in the HFA – Riviera Loan. The Direct Lenders were thus paid in full,  
 7 subject to servicing fees and any other charges under their respective Loan Servicing  
 8 Agreements and this Court's orders, including the Confirmation Order.

9 Accordingly, this Omnibus Objection seeks an order from the Court disallowing  
 10 Direct Lender claims to the extent they are based upon an investment in the HFA – Riviera  
 11 Loan. To the extent a Direct Lender claim is based upon an investment in a different loan,  
 12 it will not be impacted by this Objection.

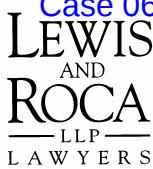
13 **II. JURISDICTION**

14 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
 15 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
 16 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

17 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
 18 Bankruptcy Rule 3007.

19 **III. BACKGROUND**

20 1. On April 13, 2006 ("Petition Date"), USACM, USA Securities, LLC ("USA  
 21 Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified  
 22 Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust Deed Fund, LLC ("FTDF,"  
 23 together with DTDF, the "Funds") (collectively, the "Debtors"), filed voluntary petitions  
 24 for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate their  
 25 businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of the  
 26 Bankruptcy Code. Debtors' post-petition management of the Debtors was under the



1 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
2 ("Mesirow"), who served as the Chief Restructuring Officer.

3 2. USACM is a Nevada corporation that, prior to the Petition Date, was in the  
4 business of underwriting, originating, brokering, funding and servicing commercial loans  
5 primarily secured by real estate, both on behalf of investors and for its own account.

6 3. That business included the solicitation of individual investors to purchase  
7 fractional interest in loans that USACM originated and then serviced. These investors,  
8 totaling approximately 3,600 as of the Petition Date, are referred to as "Direct Lenders" in  
9 USACM's bankruptcy case and in this Objection.

10 4. Although USACM serviced and sometimes originated the loans in which the  
11 Direct Lenders invested, generally USACM was not a borrower on these loans.

12 5. On September 14, 2006, the Court entered its Order Setting Deadline to File  
13 Proofs of Claim and Proofs of Interest [Docket No. 1280] (the "Bar Date Order"). The Bar  
14 Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as the  
15 deadline ("Bar Date") for creditors to file proof of claims.

16 6. On September 25, 2006, Debtors served a copy of the Bar Date Order on  
17 their service lists [Docket No. 1358]. All Creditors, including the Direct Lenders, were  
18 served with a copy of the Bar Date order as well [Docket No. 1358].

19 7. On November 6, 2006, a stipulation was filed and an order entered extending  
20 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
21 No. 1729].

22 8. On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
23 Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
24 2376] (the "Confirmation Order").

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1       9. Under the Plan, the USACM Trust is the successor to USACM with respect  
2 to standing to seek allowance and disallowance of Claims.

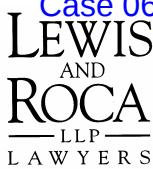
3       10. Under the Plan, unsecured claims of Direct Lenders against USACM are  
4 classified in Class A-5. Allowed Unsecured Claims "shall receive a beneficial interest in  
5 the USACM Trust, and on account of their Allowed Claim may receive a Pro Rata Share of  
6 the assets of the USACM Trust after satisfaction of all Allowed unclassified Claims,  
7 Allowed Class A-1, A-2, and A-3 Claims, and all post-Effective Date fees, costs, and  
8 expenses of implementation of the USACM Plan for USACM and the USACM Trust."

9       11. The USACM Trust exists as of the Effective Date of the Plan, which was  
10 March 12, 2007. Geoffrey L. Berman is the Trustee.

11       12. **Exhibit A** attached, lists Proofs of Claim filed by Direct Lenders that appear  
12 to be based, in part, upon an investment in the HFA – Riviera Loan. (Burr Decl. ¶ 8.)  
13 **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant's address, the  
14 total amount of the claim and the total amount of the claim that appears to be related to an  
15 investment in the HFA – Riviera Loan based upon the information provided by the  
16 claimant. (Burr Decl. ¶ 8.) The claims listed in **Exhibit A** are referred to hereafter as the  
17 HFA – Riviera Claims.

18       13. On or about May 26, 2006, the HFA – Riviera Loan was paid off in full, as  
19 reflected in USACM's books and records. (Burr Decl. ¶ 9.) Shortly thereafter, USACM  
20 processed the payoff and distributed the proceeds to the Direct Lenders on the HFA –  
21 Riviera Loan. (Burr Decl. ¶ 9.)

22       14. The Direct Lenders were in turn paid in full for their investment in the HFA –  
23 Riviera Loan, subject to servicing fees and any other charges under their respective Loan  
24 Servicing Agreements and this Court's orders, including the Confirmation Order. In  
25 general, the Direct Lenders received their principal and interest on the HFA – Riviera  
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1      Loan, less sums withheld for servicing fees, servicer advances, Prepaid Interest and sums  
 2      known as the 2% Holdback pursuant to the confirmed Plan. On the Effective Date of the  
 3      Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to the  
 4      allowed claims of the Direct Lender Committee, and the balance paid to the Direct  
 5      Lenders. (Burr Decl. ¶ 10.)

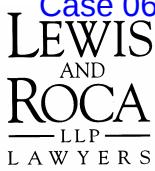
6            15. Accordingly, the USACM Trust no longer has further obligations to the  
 7      Direct Lenders arising out of the Opaque Loan because, pursuant to USACM's books and  
 8      records, the Opaque Loan has been repaid in full, and the Direct Lenders have received  
 9      such payment. (Burr Decl. ¶ 11.)

#### 10      **IV. APPLICABLE AUTHORITY**

11      1. Under the Bankruptcy Code, any Claim for which a proof of claim has been  
 12      filed will be allowed unless a party in interest objects. If a party in interest objects to the  
 13      proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim  
 14      and shall allow the Claim except to the extent that the Claim is "unenforceable against the  
 15      debtor . . . under any . . . applicable law for a reason other than because such claim is  
 16      contingent or unmatured." 11 U.S.C. § 502(b).

17      2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
 18      § 502(a). This objection is timely under the confirmed Plan, as the deadline for such  
 19      objections has been extended to February 12, 2008, by this Court's orders.

20      3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
 21      3001(f). However, once an objection to the proof of claim controverts the presumption, the  
 22      creditor ultimately bears the burden of persuasion as to the validity and amount of the  
 23      claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
 24      178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996). The ultimate  
 25      burden of proof as to the validity of a proof of claim "remains at all times upon the  
 26



1 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039  
2 (9th Cir. 2000).

3 **V. OBJECTION TO CLAIMS LISTED IN EXHIBIT A**

4 1. **Exhibit A** attached hereto and incorporated herein by this reference contains  
5 the list of the HFA – Riviera Claims. The USACM Trust objects to each of these claims to  
6 the extent it is based upon an investment in the HFA – Riviera Loan because, pursuant to  
7 USACM’s books and records as reconstructed by Mesirow, the HFA – Riviera Loan has  
8 been repaid in full, and the Direct Lenders have received such payment, as provided by the  
9 applicable Loan Servicing Agreement, this Court’s orders and the Confirmation Order.

10 2. Certain of the HFA – Riviera Claims may be the subject of subsequent, and  
11 perhaps multiple, objections if they are being asserted on the basis of multiple investments  
12 through USACM. Such Claims may also be subject to prior or subsequently filed  
13 objections, and this objection is without prejudice to any other objection by any party in  
14 interest, including the USACM Trust.

15 3. The USACM Trust reserves the right to further object to any and all Claims,  
16 whether or not the subject of this Objection, for allowance and/or distribution purposes on  
17 any other grounds. The USACM Trust further reserves the right to modify, supplement  
18 and/or amend this Objection as it pertains to any Claim or claimant herein.

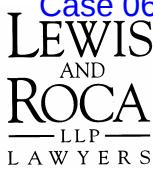
19 4. For the convenience of the Court and the parties, the USACM Trust will  
20 endeavor to file any subsequent objections to the Claims on a loan by loan basis. Thus, this  
21 Objection is one of a series of many potential objections to those Claims that are asserted,  
22 in whole or in part, on the basis of an investment that has been repaid in full.

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1      **VI. CONCLUSION**

2      The USACM Trust respectfully requests that the Court disallow the claims listed in  
3 **Exhibit A** to the extent those claims are based upon a Direct Lender investment in the HFA  
4 – Riviera Loan. The USACM Trust also requests such other and further relief as is just and  
5 proper.

6      Dated: January 10, 2008.

7      LEWIS AND ROCA LLP

8      By /s/ Rob Charles (#6593)

9      Susan M. Freeman, AZ 4199 (*pro hac vice*)

10     Rob Charles, NV 6593

11     John C. Hinderaker, AZ 18024 (*pro hac vice*)

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17     *Attorneys for the USACM Liquidating Trust*

18     Copy of the foregoing mailed by first class

19     Postage prepaid U.S. mail

20     On January 10, 2008 to:

21     All parties in interest listed on

22     Exhibit A attached

23     /s/ Renee L. Creswell

24     Renee L. Creswell